STATE OF MICHIGAN

COURT OF APPEALS

JAMES E. FELICIANO,

Plaintiff-Appellant,

v

DENNIS E. SOBCZAK,

Defendant-Cross/Plaintiff-Appellee,

and

THE AUTO SHOPPE,

Defendant-Cross-Defendant-Appellee.

UNPUBLISHED
April 10, 2003

No. 243096
Marquette Circuit Court
LC No. 01-038752-NO

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the opinion and order granting the defendants' motions for summary disposition under MCR 2.116(C)(10) in this premises liability action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when he slipped on ice while making a delivery to defendant, The Auto Shoppe. He brought this action, maintaining that his fall was caused by a small ice ridge that resulted from negligent maintenance, and that the ridge was hidden by fresh snow. The trial court concluded that these were open and obvious dangers and that a reasonable jury could not find that they posed an unreasonable risk of harm to plaintiff.

Plaintiff first argues that the trial court erred in holding that the ridge posed an open and obvious danger. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered it upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). Regardless of whether plaintiff knew of the specific ice ridge, he admitted knowing that the snow covered packed ice, and he was aware of the danger of slipping. Moreover, an average person with ordinary intelligence would have appreciated the danger.

Plaintiff next argues that the trial court erred in concluding that there was not an unreasonably high risk of severe harm. Plaintiff urges this Court to look at the ice ridge and the snow covering it as separate conditions. He maintains that the ridge was hidden by the snow and was therefore unreasonably dangerous.

If special aspects of a condition make an open and obvious risk unreasonably dangerous, an invitor must take reasonable precautions to protect invitees from that risk. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517-519; 629 NW2d 384 (2001). Special aspects are those that "give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided . . . ." *Id.* at 519. Neither a common condition nor an avoidable condition is uniquely dangerous. *Corey v Davenport College of Business*, 251 Mich App 1, 8-9; 649 NW2d 392 (2002); *Joyce v Rubin*, 249 Mich App 231, 243; 642 NW2d 360 (2002).

The trial court correctly found that there was nothing uncommon about the snow and ice conditions on this parking lot and sidewalk. They did not give rise to a uniquely high likelihood of severity of harm. Moreover, plaintiff admitted that he could have avoided the harm by going to the entrance at the back of the building.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood